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Attorney for Plaintiff: GEORGE AVALOS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GEORGE AVALOS, an individual,  
Plaintiff,

v.

VIRK PROPERTIES, INC., a  
California corporation; and DOES 1-  
10, inclusive,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For:**

- 1. VIOLATIONS OF THE  
AMERICANS WITH DISABILITIES  
ACT OF 1990, 42 U.S.C. §12181 *et*  
*seq.* as amended by the ADA  
Amendments Act of 2008 (P.L. 110-  
325).**
- 2. VIOLATIONS OF THE UNRUH  
CIVIL RIGHTS ACT, CALIFORNIA  
CIVIL CODE § 51 *et seq.***

Plaintiff, GEORGE AVALOS (“Plaintiff”), complains of Defendant VIRK PROPERTIES, INC., a California corporation; and Does 1-10 (“Defendants”) and alleges as follows:

**PARTIES**

1. Plaintiff is substantially limited in performing one or more major life activities, including but not limited to: walking, standing, ambulating, and sitting. As a result of these disabilities, Plaintiff relies upon mobility devices, including at

1 times a wheelchair, to ambulate. With such disabilities, Plaintiff qualifies as a  
2 member of a protected class under the Americans with Disabilities Act, 42 U.S.C.  
3 §12102(2) as amended by the ADA Amendments Act of 2008 (P.L. 110-325)  
4 (“ADA”) and the regulations implementing the ADA set forth at 28 C.F.R. §§  
5 36.101 et seq. At the time of Plaintiff’s visits to Defendants’ facility and prior to  
6 instituting this action, Plaintiff suffered from a “qualified disability” under the ADA,  
7 including those set forth in this paragraph. Plaintiff is also the holder of a Disabled  
8 Person Parking Placard.

9 2. Plaintiff is informed and believes and thereon alleges that Defendant  
10 VIRK PROPERTIES, INC., a California corporation, owned the property located at  
11 2593 S Clovis Ave., Fresno, CA 93727 (“Property”) on or around September 29,  
12 2020 upon which Valero (“Business”) is located.

13 3. Plaintiff is informed and believes and thereon alleges that Defendant  
14 VIRK PROPERTIES, INC., a California corporation, currently owns the Property.

15 4. The Business is a convenience store open to the public, which is a  
16 “place of public accommodation” as that term is defined by 42 U.S.C. § 12181(7).

17 5. Plaintiff does not know the true name of DOE Defendants, that may be  
18 related to the Business and/or Property. Plaintiff is informed and believes that each  
19 of the Defendants herein, including Does 1 through 10, inclusive, is responsible in  
20 some capacity for the events herein alleged. Plaintiff will seek leave to amend when  
21 the true names, capacities, connections, and responsibilities of the Defendants and  
22 Does 1 through 10, inclusive, are ascertained.

### 23 **JURISDICTION AND VENUE**

24 6. This Court has subject matter jurisdiction over this action pursuant  
25 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the ADA.

26 7. This court has supplemental jurisdiction over Plaintiff’s non-federal  
27 claims pursuant to 28 U.S.C. § 1367, because Plaintiff’s Unruh Civil Rights Act,  
28 California Civil Code § 51 *et seq.*, (“UCRA”) claims are so related to Plaintiff’s

1 federal ADA claims in that they have the same nucleus of operative facts and  
2 arising out of the same transactions, they form part of the same case or controversy  
3 under Article III of the United States Constitution.

4 8. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the  
5 real property which is the subject of this action is located in this district and because  
6 Plaintiff's causes of action arose in this district.

7 **FACTUAL ALLEGATIONS**

8 9. Plaintiff went to the Business on or about September 29, 2020 for the  
9 dual purpose of purchasing gas and a beverage and to confirm that this public place  
10 of accommodation is accessible to persons with disabilities within the meaning  
11 federal and state law.

12 10. Unfortunately, although parking spaces were one of the facilities  
13 reserved for patrons, there were no designated parking spaces available for persons  
14 with disabilities that complied with the 2010 Americans with Disabilities Act  
15 Accessibility Guidelines (“ADAAG”) on September 29, 2020.

16 11. At that time, instead of having architectural barrier free facilities for  
17 patrons with disabilities, Defendants have: a built up curb ramp that projects from  
18 the sidewalk and into the access aisle (Section 406.5). Furthermore, the curb ramp is  
19 in excess of the maximum grade allowed by ADAAG specifications (Section 406.1).

20 12. Parking spaces are one of the facilities, privileges, and advantages  
21 reserved by Defendants to persons at the Property serving the Business.

22 13. Because Defendant VIRK PROPERTIES, INC., a California  
23 corporation, owns the Property, which is a place of public accommodation, they are  
24 responsible for the violations of the ADA that exist in the parking area and  
25 accessible routes that connect to the facility’s entrance that serve customers to the  
26 Business.

27 14. Subject to the reservation of rights to assert further violations of law  
28 after a site inspection found *infra*, Plaintiff asserts there are additional ADA

1 violations which affect him personally.

2 15. Plaintiff is informed and believes and thereon alleges Defendants had  
3 no policy or plan in place to make sure that there was compliant accessible parking  
4 reserved for persons with disabilities prior to September 29, 2020.

5 16. Plaintiff is informed and believes and thereon alleges Defendants have  
6 no policy or plan in place to make sure that the designated disabled parking for  
7 persons with disabilities comport with the ADAAG.

8 17. Plaintiff personally encountered these barriers. The presence of these  
9 barriers related to Plaintiff's disability denies Plaintiff his right to enjoy accessible  
10 conditions at public place of accommodation and invades legally cognizable  
11 interests created under the ADA.

12 18. The conditions identified *supra* are necessarily related to Plaintiff's  
13 legally recognized disability in that Plaintiff is substantially limited in the major life  
14 activities of walking, standing, ambulating, and sitting; Plaintiff is the holder of a  
15 disabled parking placard; and because the enumerated conditions relate to the use of  
16 the accessible parking, relate to the slope and condition of the accessible parking and  
17 accessible path to the accessible entrance, and relate to the proximity of the  
18 accessible parking to the accessible entrance.

19 19. As an individual with a mobility disability who at times relies upon a  
20 wheelchair or other mobility devices, Plaintiff has a keen interest in whether public  
21 accommodations have architectural barriers that impede full accessibility to those  
22 accommodations by individuals with mobility impairments.

23 20. Plaintiff is being deterred from patronizing the Business and its  
24 accommodations on particular occasions, but intends to return to the Business for the  
25 dual purpose of availing himself of the goods and services offered to the public and  
26 to ensure that the Business ceases evading its responsibilities under federal and state  
27 law.

28 21. Upon being informed that the public place of accommodation has

1 become fully and equally accessible, he will return within 45 days as a “tester” for  
2 the purpose of confirming their accessibility. *Civil Rights Educ. and Enforcement*  
3 *Center v. Hospitality Props. Trust*, 867 F.3d 1093, 1096 (9th Cir. 2017).

4 22. As a result of his difficulty experienced because of the inaccessible  
5 condition of the facilities of the Business, Plaintiff was denied full and equal access  
6 to the Business and Property.

7 23. The Defendants have failed to maintain in working and useable  
8 conditions those features required to provide ready access to persons with  
9 disabilities.

10 24. The U.S. Department of Justice has emphasized the importance of  
11 enforcing laws that prohibit unlawful discriminatory behavior, especially in the era  
12 of the COVID-19 emergency. *See Statement by Assistant Attorney General for Civil*  
13 *Rights Eric S. Dreiband Protecting Civil Rights While Responding to the*  
14 *Coronavirus Disease 2019 (COVID-19)* found at  
15 [https://www.ada.gov/aag\\_covid\\_statement.pdf](https://www.ada.gov/aag_covid_statement.pdf).

16 25. The violations identified above are easily removed without much  
17 difficulty or expense. They are the types of barriers identified by the Department of  
18 Justice as presumably readily achievable to remove and, in fact, these barriers are  
19 readily achievable to remove. Moreover, there are numerous alternative  
20 accommodations that could be made to provide a greater level of access if complete  
21 removal were not achievable.

22 26. Given the obvious and blatant violation alleged hereinabove, Plaintiff  
23 alleges, on information and belief, that there are other violations and barriers in the  
24 site that relate to his disability. Plaintiff will amend the complaint, to provide proper  
25 notice regarding the scope of this lawsuit, once he conducts a site inspection.  
26 However, the Defendants are on notice that the Plaintiff seeks to have all barriers  
27 related to his disability remedied. *See Doran v. 7-11*, 524 F.3d 1034 (9<sup>th</sup> Cir. 2008)  
28 (holding that once a plaintiff encounters one barrier at a site, the plaintiff can sue to

1 have all barriers that relate to his disability removed regardless of whether he  
2 personally encountered them).

3 27. Without injunctive relief, Plaintiff will continue to be unable to fully  
4 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

5 **FIRST CAUSE OF ACTION**

6 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

7 **42 U.S.C. § 12181 *et seq.* as amended by the ADA Amendments Act of 2008**

8 **(P.L. 110-325)**

9 28. Plaintiff re-alleges and incorporates by reference all paragraphs alleged  
10 above and each and every other paragraph in this Complaint necessary or helpful to  
11 state this cause of action as though fully set forth herein.

12 29. Under the ADA, it is an act of discrimination to fail to ensure that the  
13 privileges, advantages, accommodations, facilities, goods, and services of any place  
14 of public accommodation are offered on a full and equal basis by anyone who owns,  
15 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).  
16 Discrimination is defined, *inter alia*, as follows:

- 17 a. A failure to make reasonable modifications in policies, practices,  
18 or procedures, when such modifications are necessary to afford  
19 goods, services, facilities, privileges, advantages, or  
20 accommodations to individuals with disabilities, unless the  
21 accommodation would work a fundamental alteration of those  
22 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 23 b. A failure to remove architectural barriers where such removal is  
24 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
25 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
26 Appendix "D".
- 27 c. A failure to make alterations in such a manner that, to the  
28 maximum extent feasible, the altered portions of the facility are

1 readily accessible to and usable by individuals with disabilities,  
2 including individuals who use wheelchairs, or to ensure that, to  
3 the maximum extent feasible, the path of travel to the altered area  
4 and the bathrooms, telephones, and drinking fountains serving  
5 the area, are readily accessible to and usable by individuals with  
6 disabilities. 42 U.S.C. § 12183(a)(2).

7 30. Any business that provides parking spaces must provide accessible  
8 parking spaces. 2010 Standards § 208. Under the 2010 Standards, access aisles  
9 shall be at the same level as the parking spaces they serve. Changes in level are not  
10 permitted. 2010 Standards § 502.4. "Access aisles are required to be nearly level in  
11 all directions to provide a surface for wheelchair transfer to and from vehicles." 2010  
12 Standards § 502.4 Advisory. Here the failure to provide a level access aisle in the  
13 designated disabled parking space is a violation of the law and excess slope angle in  
14 the access pathway is a violation of the law.

15 31. A public accommodation must maintain in operable working condition  
16 those features of its facilities and equipment that are required to be readily accessible  
17 to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

18 32. Here, the failure to ensure that accessible facilities were available and  
19 ready to be used by Plaintiff is a violation of law.

20 33. Given its location and options, Plaintiff will continue to desire to  
21 patronize the Business but he has been and will continue to be discriminated against  
22 due to lack of accessible facilities and, therefore, seeks injunctive relief to remove  
23 the barriers.

## 24 **SECOND CAUSE OF ACTION**

### 25 **VIOLATION OF THE UCRA, CALIFORNIA CIVIL CODE § 51 *et seq.***

26 34. Plaintiff re-alleges and incorporates by reference all paragraphs alleged  
27 above and each and every other paragraph in this Complaint necessary or helpful to  
28 state this cause of action as though fully set forth herein.

35. California Civil Code § 51 *et seq.* guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendants are systematically violating the UCRA, Civil Code § 51 *et seq.*

36. Because Defendants violate Plaintiff's rights under the ADA, Defendants also violated the UCRA and are liable for damages. (Civ. Code § 51(f), 52(a).) These violations are ongoing.

37. Plaintiff is informed and believes and thereon alleges that Defendants' actions constitute discrimination against Plaintiff on the basis of a disability, in violation of the UCRA, Civil Code § 51 *et seq.*, because Defendants have been previously put on actual or constructive notice that the Business is inaccessible to Plaintiff. Despite this knowledge, Defendants maintain its premises in an inaccessible form, and Defendants have failed to take actions to correct these barriers.

### **PRAYER**

**WHEREFORE, Plaintiff prays that this court award damages provide relief as follows:**

1. A preliminary and permanent injunction enjoining Defendants from further violations of the ADA, 42 U.S.C. § 12181 *et seq.* as amended by the ADA Amendments Act of 2008 (P.L. 110-325), and UCRA, Civil Code § 51 *et seq.* with respect to its operation of the Business and Property; Note: Plaintiff is not invoking section 55, *et seq.* of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act (Cal. C.C. §54) at all.

2. An award of actual damages and statutory damages of not less than \$4,000 per violation pursuant to § 52(a) of the California Civil Code;

3. An additional award of \$4,000.00 as deterrence damages for each violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist. LEXIS 150740 (USDC Cal, E.D. 2016); and,

1           4.     For reasonable attorneys' fees, litigation expenses, and costs of suit,  
2 pursuant to 42 U.S.C. § 12205; California Civil Code § 52.

3  
4                               **DEMAND FOR JURY TRIAL**

5           Plaintiff hereby respectfully requests a trial by jury on all appropriate issues  
6 raised in this Complaint.

7  
8 Dated: November 13, 2020

**MANNING LAW, APC**

9  
10                               By: /s/ Joseph R. Manning Jr., Esq.  
11                               Joseph R. Manning Jr., Esq.  
12                               Attorney for Plaintiff